



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN  
ATTORNEY GENERAL

September 1, 1970

Hon. Enrique H. Pena  
County Attorney  
Room 201, City-County Bldg.  
El Paso, Texas 79901

Attention: Steve W. Simmons  
First Assistant

Opinion No. M- 679

Re: Whether a Justice of  
the Peace who transfers  
a criminal case to  
another Justice of the  
Peace in the same county  
is entitled to a four  
dollar fee as provided  
in Art. 1052, Texas Code  
of Criminal Procedure?

Dear Sir:

You have asked an opinion of this office as to whether a Justice of the Peace on a fee basis is entitled to a fee for a criminal case which he has transferred to another court in the same county.

Art. 1052, Texas Code of Criminal Procedure, provides, in part, as follows:

"Four dollars (\$4) shall be paid  
to the Justice of the Peace for  
each criminal action tried and  
finally disposed of before him...."

Art. 1052 answers your question fully. By the use of the conjunctive word, "and", the Legislature has made clear its intent that a criminal action must be first tried, and, in addition, must also be finally disposed of by the Justice of the Peace before he is entitled to collect the four dollar fee due him for the performance of these two functions.

Utilizing the rule of construction that words in a statute should be construed with reference to the common and ordinary usage of the words, we conclude that the definition of "trial" as found in Article 1052 is well defined in Brackenridge v. State, 11 S.W. 630 (Tex.Civ.App. 1889, no writ). Having before it substantially the same statutory language as in Article 1052, the court held that a county judge was not entitled to a fee for actions dismissed without trial.

The Court said:

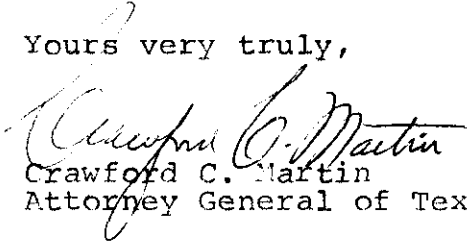
"A trial is an examination before a competent tribunal, according to the laws of the land of the facts put into issue for the purpose of determining such issue."

Obviously, therefore, no trial is had by the justice court where that court transfers the case to another court for trial of the facts put into issue.

SUMMARY

"A Justice of the Peace is not entitled to collect a fee for actions transferred or dismissed without trial. Art. 1052, Texas Criminal Procedure."

Yours very truly,

  
Crawford C. Martin  
Attorney General of Texas

Prepared by Bennie W. Bock, II  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

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